

Duplicate of #11

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

JUL 17 2003

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In re the Application of:

Toshikazu Hirayama, et al.

Confirmation Number: 3311

Serial No.: 09/821,451

FAX RECEIVED

Group Art Unit: 3763

Filed: April 3, 2001

JUL 14 2003

Examiner: Ann Lam

For: DRUG SYRINGE

GROUP 3700

Attorney Docket: 010477

RESPONSE

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Date: July 11, 2003

Sir:

In response to the Office Action mailed on April 14, 2003, please consider the following:

REMARKS

Claims 1 and 3-6 are rejected under 35 U.S.C. §102(e) as being anticipated by Dragan (U.S. Patent 6,261,094). This rejection is respectfully traversed on several grounds:

(1) With respect, the Examiner applies the new (i.e., post-AIPA) form of § 102(e) against the instant claims, but that section is believed to be inapplicable. In the earlier Office Action of October 23, 2002, the Examiner stated that the older (pre-AIPA) form of § 102(e) was applicable. The rejection appears to be legally erroneous.

(2) Dragan '094 is not prior art under either the new or the old § 102(e). The priority date of this application is October 6, 1998, but Dragan was filed in the U.S. on April 19, 2000.¹

¹ Likewise, Dragan U.S. Patent 6,379,152, which is a continuation in part of Dragan '094, and is cited as prior art, is not actual prior art.

Amendment, GAU 3763, Ser. No. 09/821,451

(3) With respect, Dragan '094 would not anticipate, even if it were actual prior art and the rejection were legally correct. This reference discloses a "capsule" 20 with a cylindrical body portion 21, an angled nozzle 26, and a "displaceable piston" 25 that is urged forward by a "syringe gun" that is not illustrated (see col. 3, line 48 and col. 4, lines 13-18 and 27-37).

Dragan '094 does not disclose "a nozzle which is freely detachable [from the barrel]..., a mounting portion ...and a discharging portion which extends bending at a predetermined angle from this mounting portion," as claim 1 recites. The nozzles disclosed by Dragan '094 are all unitary with their respective barrels. The embodiment of Fig. 14 *appears* to be in two parts from the cross-section shading lines, but the description starting at col. 6, line 47, explains that the second part is only a cap, not part of the barrel/nozzle unit.

The Examiner asserts that Dragan '094 also discloses the claimed tapered nozzle, but this is respectfully believed to be incorrect. First, the reduced diameter of the orifice as compared to the diameter of the barrel, which is mentioned in the Abstract, appears to describe only the embodiment of Fig. 14 (which has a hole, not a nozzle). Second, while Dragan teaches that the diameter of the nozzle can be smaller than the diameter of the barrel (col. 4, line 2-4, cited by the Examiner) that is not the same as teaching that the nozzle is *tapered*; a joint between two different sizes of pipe, for example, does not require a taper.

Dragan '094 discloses a nozzle, a barrel, and a plunger, but the plunger arguably does not "slide hermetically" as claimed, since there is no gasket. Apparently the "ultra dense composite," which is so thick that it is "expressed [i.e. extruded] as a rod" (column 4, line 38) does not leak back past the piston 25 due to its great viscosity. But "hermetic" means "made airtight" (Random House Dictionary) and there is no disclosure of such close sealing.

The Examiner asserts that all of the subject matter of the dependent claims is disclosed by Dragan '094, but the Applicants do not see these features in the reference at the cited places. Clarification is respectfully requested.

Amendment, GAU 3763, Ser. No. 09/821,451

In view of the errors in the rejection argued above, the claims are believed to be in condition for allowance. Withdrawal of the rejection and allowance of all claims is requested.

In the event this paper is not timely filed, then this paper is a petition for an appropriate extension of time. The fees for such an extension or any other fees which may be due with respect to this paper may be charged to Deposit Account No. 01-2340. Favorable consideration and allowance are respectfully solicited.

Respectfully submitted,

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I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) 305-3590) on July 14, 2003.

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Signature *Nick Bromer*

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